

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21**

AMERON INTERNATIONAL CORPORATION¹

Employer

and

Case 21-RC-20721

SOUTHERN CALIFORNIA DISTRICT COUNCIL
OF LABORERS AND ITS AFFILIATED LOCAL,
LABORERS INTERNATIONAL UNION OF NORTH
AMERICA LOCAL 89, LIUNA, AFL-CIO²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was conducted before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and seeks to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production employees of the Employer at its facility located at 10441 Vine Street, Lakeside, CA 92040, including employees supplied by temporary employment agencies, all laborers, forklift operators, crane operators, tippers, pipe machine operators, cage machine operators, welders, patchers, foremen, maintenance employees, clean up employees and leadpersons; excluding quality control employees, office clerical employees, superintendent, salaried foremen, guards and supervisors as defined in the Act.

ISSUES AND CONCLUSIONS

Petitioner seeks to represent a unit composed of all full-time and regular part-time production employees, including employees supplied by temporary employment agencies. The Employer contends that the unit sought by Petitioner is inappropriate because the employees provided by the temporary employment agencies do not share a community of interest with the Employer's solely-employed employees, and that the appropriate unit should exclude those employees.

For the reasons noted below, I find that the unit sought by the Petitioner is an appropriate unit because the employees supplied by temporary employment agencies share a community of interest with the Employer's solely-employed employees.

FACTS AND ANALYSIS

A. The Employer's Operation

The Employer is a Delaware corporation engaged in the manufacture of concrete pipes. The Employer's principal offices are in Pasadena, California and a production facility is located at 10441 Vine Street, Lakeside, California (hereinafter Vine facility, the only facility involved herein).

The Employer employs five solely-employed production employees³ at the Vine facility: Plant Superintendent Porfie Torrez (hereinafter Torrez); Salaried Foreman Steve Routh (hereinafter Routh); and foremen Wade R. Helms (hereinafter Helms), Roeshorn H. Hale (hereinafter Hale), and Bobby Faulkner (hereinafter Faulkner).⁴

At the hearing the parties stipulated that any unit found appropriate should include all full-time and regular part-

³ The Employer also has five solely-employed employees working in the office, which all parties agree should be excluded from the unit as office clerical employees.

⁴ At the hearing, the parties stipulated that Routh and Torrez should be excluded from the appropriate unit as they are supervisors as defined by Section 2(11) of the Act. The parties also stipulated that Helms, Hale and Faulkner are not supervisors, as defined in the Act, and that they should be included in the appropriate unit.

time solely-employed hourly foremen and solely-employed laborers employed by the Employer at its Vine facility inasmuch as they share a community of interest with each other with regard to wages, hours and terms and conditions of employment.⁵

The Employer has a history of employing temporary employees provided by temporary agencies. On July 28, 2003, Torrez executed an agreement with Command Staffing & Labor (hereinafter Command) for it to provide temporary employees to the Employer. The agreement states that Command's billing rate includes all wages, worker's compensation premiums, unemployment insurance, payroll taxes, medical coverage at the current levels, and all other employer burdens including administration and payroll funding.⁶ The Employer currently utilizes 25 temporary workers provided by Command. All the employees work in one building and in the same general area.

B. Classifications

1. Production Laborers

The Employer's production operation consists of production laborers, maintenance employees and cleaning laborers. Production laborers include employees who perform various jobs, including cleaning rings, cleaning forms⁷, assembling the cages⁸,

⁵ The parties also stipulated that any appropriate unit should exclude all other employees, quality control employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

⁶ Prior to being supplied with temporary employees by Command, Labor Ready supplied the Employer with temporary employees, (labor personnel and production laborers).

⁷ "Forms" are pipe molds.

finishing pipes, repairing pipes, and unloading pipes. They also include the follow sub-classifications:

a. Forklift Operators:

The majority of employees in the facility are trained and certified to operate a three-ton forklift. The Employer also has 12-ton and over 12-ton forklifts. The larger forklifts are used to transport pipes outside of the production building, where they are inspected and repaired, if needed. The pipes are then loaded for delivery.

b. Crane Operators:

Employees operate bridge cranes, which are overhead cranes used to move products around as it is being produced. They also move finished pipe from the production area to the cure area.

c. Tippers:

Two employees perform the tipping work. Once pipes are moved to the cure area, they are transferred out of the cure area using a tipping machine⁹, operated by mainly Hale. Helms and temporary employee, Carlos Blea (hereinafter Blea), run the tipper. Blea, however, runs the tipper only if Helms or Hale are not available.

d. Pipe Machine Operators:

⁸ A "cage" is a rebar steel rolled to the diameter of the pipe being manufactured, which is then placed inside the pipe for reinforcement. It is then placed in a form and concrete is poured into it to form the pipe.

⁹ A tipper is a machine used to handle pipes. The record is not clear whether temporary employees clean the rings while the pipe is on the tipper or once the forklift has picked the pipe from the tipper to set it outside for any needed repairs.

Pipe machine operators run the machine that makes the pipe used to reinforce the cage. Temporary employee Mellesio Urrea (hereinafter Urrea)¹⁰ performs this work.

e. Cage Machine Operator:

The cage machine is a machine that molds coiled rebar and forms it into a reinforcement cage for the size of the pipe that they are producing. A temporary employee usually operates it.

f. Welders:

Welders repair end forming rings, which are located at the end of the concrete pipe. Welders are also the maintenance employees. This work is performed by temporary employees.

g. Patchers:

The Employer has five temporary employees working as patchers. However, other employees at the Vine facility are able to patch and may be transferred to the patching area when required.

Patchers repair pipes after they have been laid in certain areas. The patchers inspect the pipe, clean the area of any defects, and then use a mixture of cement repair, or patch material, to repair it. After the patchers inspect the pipe, the forklifts take the pipes to the yard.¹¹

2. Maintenance Employees

¹⁰ Urrea is trained as an pipe machine operator and operates both pipe machines. He also runs a folklift and performs patching work.

Three temporary employees perform maintenance work. One employee maintains the equipment and forklifts and repairs items needing repair. Temporary employee Douglas Lopez (hereinafter Lopez) performs maintenance work during the second shift¹², greasing, making repairs to equipment, checking oil levels on equipment, and performing general maintenance.

Maintenance and repairs are made to production pipe machines¹³, loader, golf carts, vibrators¹⁴ and conveyer belts by temporary employees Eric Balane (hereinafter Balane) and Donald Hollman (hereinafter Hollman), who work on the first shift. Balane maintains the three-ton forklifts and Hollman performs welding work.

3. Clean-Up Laborers

The temporary employees are responsible for the cleaning of the production area and equipment. However, they also perform production work, although the record does not describe what production work they perform.

C. Terms and Conditions of Employment

1. Wages

Most of the temporary employees earn between

¹¹ One temporary employee works in the patching area from 8:00 a.m. to 4:30 p.m. to cover the last items leaving the plant.

¹² Second shift hours are from 1:30 p.m. to 9:30 p.m. This shift consists of only maintenance and cleaning employees.

¹³ The Employer has two pipe-making machines, the Hawkeye, which produce 18 through 48 inch in diameter pipes, and the McCracken, which makes 54 to 84 inch in diameter pipes. The employees working on the Hawkeye work from 7:00 a.m. to 3:30 p.m., and those working on the McCracken work from 8:00 a.m. to 4:30 p.m.

\$10.00 and \$12.00 an hour. One temporary employee earns more than \$12.00 an hour, but the exact amount was not disclosed on the record. Command bills the Employer for the hours worked by the temporary employees. Command pays the employees' payroll taxes. The Employer negotiated the rate of pay paid by Command so that it would be equivalent to the rate previously paid by Labor Ready.

The Employer directly pays the wages of solely-employed production employees Faulkner, Hale and Helms. Faulkner is an hourly employee who earns \$16.59 an hour; Hale is an hourly employee who earns \$13.20 an hour; and Helms is an hourly employee who earns \$16.85 an hour.

2. Bonuses

The Employer also requires that Command pay \$.25 per hour as a year-end bonus to temporary employees, which is a safety bonus that the Employer also offers to its solely employed employees. All employees (both temporary and solely-employed) also receive a profit bonus.

3. Benefits

The Employer provides medical insurance through Kaiser Permanente to its solely-employed employees¹⁵, while Command

¹⁴ Vibrators are worked on by the same operators who would be running the machine for the purpose of pouring in the concrete.

¹⁵ The parties stipulated at the hearing that the self-paid portion of the monthly health premium paid by the solely employed employees is \$91.86 per employee per month.

provides medical coverage for the temporary employees. The record reveals that the two medical plans are similar.

The Employer provides its solely-employed employees with worker's compensation benefits and unemployment insurance premium payments. Command covers worker's compensation and unemployment insurance for the temporary employees, but bills the Employer as required by their contract.

Solely-employed employees are able to participate in a pension plan provided by the Employer.¹⁶ Temporary employees do not participate in the Employer-sponsored pension plan. In fact, temporary employees do not have a pension plan.

Solely-employed and temporary employees are entitled to paid vacations: Faulkner is entitled to 4 weeks of paid vacation; Helms is entitled to 3 weeks paid vacation; Hale receives 2 weeks of paid vacation; and temporary employees are entitled to 1 week of paid vacation.

The record reflects that the Employer discussed with Command its desire that temporary employees receive a 1-week paid vacation. Command bills the Employer for the paid vacation of the temporary employees.

4. Hours

Temporary employees employed during the first shift work from 6:00 a.m. to 2:30 p.m. or 7:00 a.m. to 3:30 p.m.¹⁷

¹⁶ The parties stipulated at the hearing that the solely employed employees' pension plan is a self-funded defined benefit which presently pays a benefit of \$38.00 a month per year of service.

¹⁷ Production has one shift (day), while maintenance and cleaning have two shifts (day and night).

Temporary employees working during the second shift work from 1:30 p.m. to 9:30 p.m.¹⁸ Faulkner, Helms and Hale work on the first shift. However, Helms works during the second shift as scheduled.

The Employer determines the hours worked by all the employees. The Employer's engineers decide what will be produced on a daily basis, which is then reviewed and approved by Torrez and Routh. Faulkner will also receive a copy of the engineer's production schedule. Routh will then create a weekly schedule and determine which employees, solely-employed and temporary, will work during that week.¹⁹

Neither the solely-employed, nor the temporary employees, have punch cards to record their hours worked. Instead, Routh keeps record of the hours worked by each employee, except maintenance employees. Helms maintains the record of the hours worked by the maintenance employees. The Employer then provides Command with the number of hours worked by the temporary employees, including straight and overtime.

5. Supervision and Leads

Torrez and Routh supervise the Employer's production operation. Hale, Faulkner, and Helms oversee production, but to a lesser degree. They serve as leads and have some authority over the temporary employees, mainly because they are solely-employed employees. Hale also runs the tipper and is

¹⁸ The record reveals that the second shift is worked on an as-needed basis. The Employer is currently running a second shift.

involved in the making of each individual pipe by taking production material²⁰ to the holding bins as the Employer receives it.

Faulkner's duties include overseeing the production work, training cage machine operators, and ensuring that cages being produced are of good quality. He also performs various production jobs, such as rolling mesh cages, and overseeing the operation when Routh is not present.

Helms' duties include assigning and overseeing the maintenance work. He also performs maintenance work himself.

6. Hiring and Firing

Solely-employed employees are hired based, in part, on experience with the various machinery operated by the Employer. In its efforts to solicit adequate candidates for solely-employed positions, the Employer places ads in newspapers, listing the job requirements and skills desired.

Command provides temporary production employees to the Employer based on the Employer's production needs. However, the Employer must approve the hiring. Command is solely responsible for verification of the employees' work authorization and pays for the new employees' physical exams needed before the employee is put to work at the Employer's facility. If a temporary employee's work performance is not up to par, the Employer

¹⁹ Routh and Faulkner will discuss how much time it will take to reach the production goal.

²⁰ Production material includes cement, aggregate, steel, rebar and mesh.

discharges the temporary employee within 90 days of being provided by Command.²¹

7. Tenure of Employees

The record reveals that about 90 percent of the temporary employees have worked for the Employer for more than 2 years. One of the temporary employees has worked for the Employer for 8 to 10 years. Faulkner has worked for the Employer for about 8 years; Hale for more than 2 years; and Helms for about 10 years.

8. Employer Rules and Regulations

The Employer's solely-employed and temporary employees are all subject to the rules and regulations described in the employee handbook. However, progressive steps are taken when Torrez is deciding to discipline and/or terminate a solely-employed employee because they are more difficult to replace than temporary employees. These steps are not described in the employee handbook, but rather is a practice by the Employer as to the solely-employed employees. Such progressive discipline is not required when considering the discipline and/or termination of temporary employees.

9. Request for Time Off

Routh authorizes requests for time off for all production employees. The temporary employees may make a request to Hale, Helms or Faulkner, who would then discuss the request

²¹ The Employer ultimately decides whether to terminate a temporary employee. Torrez will contact Command and demand that the temporary employee(s) be discharged.

with Routh. Routh makes the ultimate decision as to whether or not the request for leave or time off will be granted.

D. Board Law and Precedent

In making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine an appropriate unit. P.J. Dick Contracting, 290 NLRB 150 (1988). Moreover, the unit sought by the petitioning labor organization is always a relevant consideration and a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to that requested does not exist. Holiday Inn City Center, 332 NLRB 1246, 1250 (2000), citing Overnite Transportation Co., 332 NLRB 723 (1996) and Dezcon, Inc., 295 NLRB 109 (1989).

A petitioner must demonstrate that the employees in the petitioned-for unit share a sufficient "community of interest" so as to constitute an appropriate bargaining unit. Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971). In M.B. Sturgis, Inc., 331 NLRB 1298 (2000), the Board concluded that a unit composed of temporary and solely-employed employees may constitute an appropriate unit for bargaining if the employees share a community of interest. To assess whether employees share such a community of interest, the Board weighs a variety of factors, including: methods of wages or compensation; hours of work; employment benefits; supervision; qualifications, training and skills; job functions and the location where job duties are performed; the amount of interaction and contact with other employees; integration of work functions and interchange

with other employees; and the history of bargaining. Home Depot USA, 331 NLRB 1289 (2000), citing Kalamazoo Paper Box Corp., 136 NLRB 134 (1962).

That some of the employees working for that employer may have some differing terms and conditions of employment from those of their colleagues does not ordinarily mean that those employees cannot be included in the same unit. Berea Publishing Co., 140 NLRB 516, 518 (1963). It would be a matter of determining whether the dissimilar terms and conditions of employment substantially outweigh the common terms and conditions of employment shared by the regular and temporary employees. Outokumpu Copper Franklin, Inc., 334 NLRB No. 39 (2001).

E. The Community of Interest Analysis

The record reveals that the Employer and Command jointly employ the temporary employees.

The record also reveals that the similarities in the terms and conditions of the solely-employed and temporary employees sufficiently outweigh any differences, rendering the petitioned for unit appropriate for collective bargaining purposes. Outokumpu Copper Franklin, Inc., supra. In this regard, it is noted that Torrez and Routh supervise the production operation and Routh is the immediate supervisor of the plant. Routh schedules and assigns the temporary and solely-employed employees that will be working on a daily basis and is the final authority on any requests for time off. Hale, Faulkner and Helms serve as leads and oversee the work of all the

temporary employees as far as ensuring that the production work is being done properly. Thus, the solely-employed and temporary employees share common supervision by Torrez and Routh.

The temporary and solely-employed employees work during the same shifts, and same designated hours. Temporary and solely-employed employees interchange their duties, as revealed by Hale running the tipper and participating in the making of pipes; and Faulkner performing various production jobs, such as rolling mesh cages and performing maintenance work himself. In addition, temporary employee Blea may work the tipper when Hale or Helms is not available, and the majority of the temporary employees can operate the three-ton forklifts and serve as patchers when required.

All employees work in the same building and in the same general area, side-by-side. They all work together to ensure that the Employer's production is of quality.

The medical plans offered to the temporary and solely-employed employees are similar. Both groups of employees are offered bonuses to reduce or eliminate work-related injuries, as well as profit bonuses. The Employer ultimately pays for the temporary employees' worker's compensation, unemployment benefits, and paid vacation, which all employees are entitled to receive.²²

²² It is not significant that Command makes the actual payments when Command bills the Employer for such benefits.

All the employees are subject to the same Employer rules and regulations. They are all subject to discipline and/or termination for violating those rules and regulations. It is of little consequence that the Employer chooses to implement a progressive disciplinary process as to the permanent employees and not the temporary employees. Accordingly, it is concluded that this fact does not render the unit inappropriate.

Finally, the temporary employees apparently have an expectation of consistent work tenure if they are not terminated within 90 days of their employment. Thus, 90 percent of the temporary employees have been working for the Employer for at least 2 years. The record reveals that one temporary employee has been working for the Employer as supplied by temporary employment agencies for about 8 to 10 years, almost as long as Hale and Faulkner.

Citing Laneco Construction Systems, Inc., 339 NLRB No. 132 (2003), the Employer contends that the unit sought by Petitioner is not an appropriate unit, in that the two groups of employees are subject to different hiring and firing criteria, have different wage rates and benefits, are carried on separate payrolls, and have different pay dates.²³

Initially, Laneco is distinguishable from the present case. In Laneco, the Board was confronted with post-election challenged ballots where the petitioner challenged the ballots of temporary employees provided by an employment agency. The Board

²³ As noted above, the record does not reveal when the temporary and solely-employed employees receive their wages.

concluded that the parties' stipulated election agreement was ambiguous and that it was therefore appropriate to consider whether the unit should include the temporary employees based on a community of interest analysis²⁴. Noting that there were "significant" differences²⁵ in the working conditions of the two groups of employees, the Board concluded that the petitioned-for unit composed solely of the employer's solely-employed employees, was an appropriate unit.²⁶

In contrast, in the present case, the Petitioner seeks to include the temporary employees in the bargaining unit. Moreover, while there are some differences in the working conditions of the two groups of employees, it is concluded that the differences are not so significant as to render the petitioned-for unit inappropriate.

The record in the instant case reveals that while the Employer uses different criteria in its hiring and firing practices, the Employer ultimately decides whether an employee is hired or fired, and the length of that employee's tenure with the Employer. The Board has found appropriate units, which include

²⁴ As the petitioner therein did not seek to include the temporary employees in the unit, the appropriate question posed was whether the unit sought is an appropriate unit.

²⁵ The Board's decision did not reveal the nature of the significant differences.

²⁶ The Employer also cites Holiday Inn City Center, 332 NLRB 1246 (2000), in support of its contention. In Holiday Inn, the petitioner sought a unit excluding temporary workers. The Board, in finding the unit sought appropriate, specifically noted that the unit including the temporary workers might also constitute an appropriate unit.

temporary employees, notwithstanding disparity in wages and benefits such as those presented here. Outokumpu Copper Franklin, Inc., supra; Interstate Warehouse, 333 NLRB 682 (2001).

With regard to the claimed disparity in wages, in the present case, temporary employees, with the exception of one, all earn between \$10.00 and \$12.00 an hour. This wage rate was negotiated by the Employer and is very close to Hale's wage rate. The fact that Faulkner and Helms earn more appears to be a function of their length of employment and lead status.

With regard to the medical plans, Torrez testified that "they are very close". The only real difference is that permanent employees have to contribute \$91.86 a month while the temporary employees do not.

Another difference noted by the Employer is that the permanent employees are provided a pension plan, but temporary employees are not. As noted, a disparity in some benefits provided to employees is not sufficient to find that they do not share a community of interest so as to render the petitioned-for unit as inappropriate. Outokumpu Copper Franklin, Inc., supra; Interstate Warehouse, supra.

The Employer also contends that the temporary employees do not share a community of interest with the solely-employed employees because the solely-employed employees serve as leads who direct the work of the temporary employees and set their schedules²⁷. The record herein reveals that the three solely-

²⁷ The Employer cites no case support for its proposition that a unit which includes lead employees with other employees is not an appropriate unit.

employed employees who serve as leads oversee the work of the temporary employees. However, Torrez and Routh supervise all aspects of the production and maintenance of the Employer's operation.

The Employer also contends that the temporary and solely-employed employees are subject to different personnel policies and hiring and firing criteria rendering the unit sought inappropriate. Contrary to the Employer's assertion, the record reveals that the Employer's rules and regulations apply to all the employees. Moreover, all the employees are subject to disciplinary action by the same supervisory personnel if the rules and regulations are violated. While the Employer utilizes progressive discipline for its solely-employed employees which is not utilized for the temporary employees, it is concluded that this difference in discipline practices is not sufficient to render the unit sought inappropriate. Sturgis, supra; Outokumpu Copper Franklin, Inc., supra; Interstate Warehouse, supra.

With regard to the difference in hiring and firing of the two groups of employees, the record reveals that Employer sets the criteria for all decisions. While the Employer requires slightly greater skill when hiring solely-employed employees, it is because they are expected to serve as leads; while less skill is required for the temporary employees. In addition, Torrez approves the hiring of temporary employees and demands that Command terminate an employee when the employee does not work out. The Employer does not have a structured probationary period and temporary employees apparently can expect a long tenure with

the Employer if they are not terminated within their first 90 days.

Thus, the differences between the two groups' rates of pay, benefits, and terms and conditions of employment are created and controlled by the Employer. Any differences are greatly outweighed by the similarities among the two groups in the terms and conditions of employment, including the same supervision, side-by-side work, similar personnel policies and work rules, similar benefits (medical, worker's compensation and unemployment insurance), and incentive bonus payments. Moreover, the two groups work the same hours, there is daily contact among the two groups, and there is regular interchange among the two groups of employees in performing the various production jobs.

Finally, the Employer asserts that if a combined unit is found appropriate and if the Petitioner is certified to represent it, serious problems could arise in requiring the Employer to negotiate acceptable medical, pension and vacation benefits which would apply to the two groups of employees. In M.B. Sturgis, supra at 1306, the Board rejected the identical contention. The Board noted that in such situations, an employer is obligated to bargain only over the employees with whom it has an employment relationship and only to the extent it controls or affects their terms and conditions of employment.

For the reasons noted above, I conclude that the temporary and solely-employed employees share a community of interest, and that the petitioned-for unit is an appropriate unit for the purposes of collective bargaining.

There are approximately 28 employees in the appropriate unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently

replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **Southern California District Council of Laborers and its affiliated local, Laborers International Union of North America Local 89, LIUNA, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election.²⁸ North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, on or before April 2, 2004. No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of

²⁸ The list may initially be used by the Regional Director to assist in determining an adequate showing of interest. The Regional Director shall make the list available to the Petitioner when she shall have determined that an adequate

a request for review operate to stay the requirement here imposed.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three (3) working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. The Board in Washington must receive this request by 5 p.m., EST, on April 9, 2004.

DATED at Los Angeles, California, this 26th day of March 2004.

showing of interest among the employees in the unit found appropriate has been established.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board